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July 13, 2012

DOCKET FILE COPY ORIGINAL

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VIA HAND DELIVERY

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

FILED/ACCEPTED

JUL 13 2012
Federal Communications Commission
Office of the Secretary

**Re: Windy City Cellular – Submission of Supplemental Information
Related to Interim Order of June 12, 2012
WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN
Docket No. 09-51, WT Docket No. 10-208**

Dear Ms. Dortch:

Windy City Cellular, LLC (“WCC”) writes to provide additional information for staff consideration in response to the *Interim Order* released by the Wireless Telecommunications Bureau on June 12, 2012.¹ In response to staff requests, WCC also includes additional information regarding minutes of use for its White Alice cell site. In accordance with the Protective Order adopted in the above referenced proceedings, WCC provides this public version of the supplemental information. The [[]] symbols herein denote Confidential Information. A Confidential version of this information is being filed separately with the Wireline Bureau. Additionally, a Confidential version is also being filed with the Secretary’s Office.

Should you have any questions concerning the foregoing request, please contact the undersigned.

Sincerely,



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Counsel for Windy City Cellular, LLC

¹ See *In the Matter of Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Order (rel. June 12, 2012) (“*Interim Order*”).



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45, GN Docket No. 09-51, WT Docket No. 10-208**

Dear Ms. Dortch:

Windy City Cellular, LLC (“WCC”) appreciates that through its *Interim Order*, released on June 12, 2012, the Wireless Telecommunications Bureau seeks to provide WCC with sufficient funding to maintain operations as staff evaluates the WCC and Adak Eagle Enterprises (“AEE”) Petitions for Waiver together.¹ WCC reiterates its urgent need for relief retroactive to January 1, 2012, and hereby provides additional information for staff consideration.

I. WCC Needs Interim Support Retroactive to January 1, 2012 to Cover the Shortfall in Operating Expenses for the First Five Months of 2012.

WCC is grateful for the interim relief granted by the Bureau with the goal of allowing WCC to “maintain its wireless operations, while affording the Bureau sufficient time to evaluate WCC’s Petition and related filings.”² The Bureau granted this interim support based on its belief that this is the amount of support necessary for WCC to “maintain its wireless operations,” “to

¹ See *In the Matter of Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Order (rel. June 12, 2012) (“*Interim Order*”). See also Petition for Waiver of Windy City Cellular, LLC, WC Docket No. 10-90, *et al.*, filed April 3, 2012; see also Petition for Waiver of Adak Eagle Enterprises, LLC, WC Docket No. 10-90, *et al.*, filed May 22, 2012.

² In the *Interim Order*, the Bureau provided WCC with interim support of \$40,104 per month beginning in June 2012 “for at least three months and up to six months or until the Wireless Telecommunications Bureau (“the Bureau”) resolves WCC’s Petition, whichever comes first.” *Interim Order*, ¶¶ 10, 16.



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maintain the status quo pending a complete review of WCC's Petition," and "to offset actual monthly operational expenses."³

While the relief granted is needed and appreciated, it does not achieve the Bureau's goal of maintaining the status quo, nor does it offset WCC's "actual monthly operational expenses." It only offsets half of WCC's actual operating expenses for 2012, from June to December, disregarding the substantial shortfall WCC has suffered since January 1 when its funding was suddenly cut by 84% under the new rules adopted in the *USF/ICC Transformation Order*.⁴

As the Bureau notes in paragraph 7 of the *Interim Order*, the support requested by WCC, \$880 per line, per month,⁵ was calculated by WCC to cover its basic operating expenses, less its revenues.⁶ However, it seems the Bureau did not observe that the support calculated by WCC, which is less than half of what WCC previously received, is based on a five-year annual average and the assumption that this level of support would be available from January 1 through December 31, not beginning in June for just half the year.⁷

WCC's shortfall in operating expenses has been mounting since January when the 84% flash cut took place. WCC has entirely depleted all resources it had for operating its system, undertaking needed improvements, responding to emergencies that have and may arise,⁸ and replacing its

³ *Id.*, ¶ 16, n. 26.

⁴ See 47 C.F.R. § 54.307(e)(3)(v) (applying a \$3,000 cap, as of January 1, 2012, on annual per line support to CETCs that serve remote areas in Alaska); see also *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663, n. 880 (2011) ("USF/ICC Transformation Order").

⁵ In the *Interim Order* the Bureau did not afford WCC the full measure of its requested support, instead granting interim relief that is approximately \$20,000 less per month than requested. The relief requested by WCC would have yielded support of approximately \$80,960 per month. The total support granted, combining monthly capped support and the additional interim support granted in the *Interim Order*, is approximately \$60,804 per month. The Bureau excluded WCC's depreciation expenses, and its nominal return on its ratebase.

⁶ See *Interim Order*, ¶ 7 ("WCC explained that this level of support was needed to allow WCC 'to cover its operating expenses less its revenues, to maintain the sites it already operates to provide wireless service to Adak residents, workers, and visitors and to ensure critical services and public safety are not jeopardized.'").

⁷ See Petition for Waiver of Windy City Cellular at 25 ("The annual amount of support sought represents a five-year average of what WCC will need each year to receive a return on its ratebase and cover its operating expenses, depreciation expenses and taxes."). Whether the Bureau grants WCC support of \$60,804 a month or \$80,960 a month, the support is needed all year, each month of the year, not half the year.

⁸ Given the extreme weather and remoteness of Adak, emergencies are not uncommon. Just last week, an explosive ordinance disposal team traveled to Adak, after several previously failed attempts to arrive on the island due to weather conditions, and detonated bombs from the WWII-era that had resurfaced on Adak. See Attachment D.



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facilities when needed.⁹ When it started the year, WCC had cash on hand of [[REDACTED]]. By June 30th, WCC had only [[REDACTED]] in cash. At the same time, WCC is struggling to fund costs associated with this intensive and expensive effort to obtain FCC relief from the devastating flash cut. Legal, engineering and consulting costs are now running into the hundreds of thousands of dollars – an expense that was not anticipated in WCC’s operational plan for the year.¹⁰

There are several consequences of the complete depletion of WCC’s resources due to the 84% flash cut, including the following non-exhaustive list of ramifications: (1) WCC no longer has the funds to upgrade its facilities to offer 3G (LTE) service; (2) WCC no longer has the funds for needed backhaul redundancy, which leaves all WCC customers without service when outages occur due to the extremely challenging service conditions;¹¹ (3) WCC does not have the funds for software to track and bill the roaming minutes on its network; and (4) in order to pay other bills, including the consultant and legal bills for this effort, WCC may no longer have enough funding to continue operating its retail store which just opened on January 7, 2012, requiring termination of an additional employee. The store provides an important retail presence for residents of Adak, allowing customers to purchase pre-paid voice and data services and wireless devices. WCC never would have planned for and invested resources toward the retail store if it had known that the Commission was going to suddenly cut its funding beginning in January.

Another significant consequence of the inadequate interim financial support to WCC is that its wireline affiliate, AEE, has now dropped below the tier classification requirements of its RUS loan covenants, potentially triggering default on AEE’s RUS loan. Given the substantial investments WCC and AEE have made in order to serve the remote Adak area, it would be contrary to the public interest for the Commission to allow its USF reforms to force WCC and AEE into default so that other carriers might potentially buy their USF and RUS-subsidized assets out of bankruptcy for pennies on the dollar.¹² Furthermore, as pointed out by the Alaska

⁹ For example, in May 2012, power was lost at the White Alice cell site after rats chewed through power lines. At WCC’s expense, crew from the mainland U.S. had to be flown to Adak because there was no equipment on the island that could determine each location where the rats chewed through. The hired crew brought the required electrical location devices and performed the necessary repairs so that the cell site could become operational again.

¹⁰ WCC is grateful for the waiver process, but it questions whether the Commission understands how time-consuming, laborious and expensive it is for small carriers to engage in this process.

¹¹ *Interim Order* at ¶ 5; *see also* WCC June 10 Ex Parte at 3 (“If the right amount of interim support is not provided retroactively, WCC will suffer many additional consequences,” including that the company “will continue operating without backhaul redundancy in a dangerous climate prone to earthquakes, cyclonic winds, tsunamis and other extreme weather, as well as in an area saturated with active bombs. WCC will be left without network redundancy on a permanent basis.”); WCC June 11 Ex Parte at 3.

¹² *See* Letter from John T. Nakahata, Counsel, General Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, 3, filed June 11, 2012



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Rural Coalition (“ARC”), bankruptcy cases often are very time-intensive, involve complex creditor issues, and place financial burdens on lenders. In this case, an RUS loan default would result in lost principle and interest payments, as well as the likely added pressure of providing bridge financing while the bankruptcy issues are resolved.¹³ WCC agrees with the ARC that the impacts of a bankruptcy “will reduce [RUS’s] ability to fund broadband infrastructure elsewhere and harm the Commission’s goal of providing funds for broadband expansion in unserved areas.”¹⁴

AEE emphasizes that it has made substantial investments, with the help of RUS loans, to single-handedly build a fiber network and maintain infrastructure in order to physically reach every home and business in Adak. There is no question and no dispute that General Communication, Inc. (“GCI”), operating under the brand name Alaska Wireless, relies on AEE’s facilities and infrastructure, including fiber and switch, for the interconnection necessary to provide its wireless service and connect GCI’s wireless customers with customers on the wireline network.¹⁵ GCI also relies on AEE’s technicians for support. Unlike GCI which operates on a statewide basis and relies on AEE’s infrastructure for the interconnection necessary to provide its wireless service in downtown Adak, AEE and WCC operate only on Adak Island, employ staff stationed on Adak, and rely on the infrastructure built through their own investments. This presence and comprehensive level of commitment has allowed AEE and WCC to provide quality and reliable service to the remote Adak area consistent with universal service goals; without adequate retroactive funding, this important, relied upon service will be threatened. Furthermore, WCC shares the concern raised by the ARC that “[t]he Commission runs a real risk of losing critical

(“Staff also inquired as to whether GCI’s wireless services on Adak could remain operational even if Adak Eagle Enterprises, the wireline incumbent LEC, were to shut down its operations. GCI believes it could do so, as it does not believe it relies on Adak for telecommunications facilities *that could not be replaced, if not acquired from the debtor’s estate.*”)(emphasis added); *see also* Comments of General Communication, Inc., WC Docket No. 10-90 *et al.*, n.2 (filed July 2, 2012)(“GCI Comments”)(“GCI anticipates that it may need to invest in additional coverage and/or power for indoor use, *as well as either to acquire facilities from AEE’s estate* or to construct new transmission paths for enterprise customers, and thus could require more support than it currently receives”)(emphasis added). AEE will submit separately formal reply comments addressing these and other comments submitted by GCI.

¹³ *See* Comments of the Alaska Regulatory Coalition at 7 (stating that “the Commission should move with great caution regarding any suggestion that issues of continued service can be resolved through bankruptcy proceedings” and that it “sincerely hopes the Commission would avoid deferring its regulatory discretion to the courts regarding telecommunications policy”).

¹⁴ *See id.*

¹⁵ Although GCI makes several speculative statements regarding how it “could provide” service or “replicate” facilities if WCC ceases operations (assertions that are questioned by the ARC in its Comments at 6), it does not deny that its current wireless service is dependent on AEE facilities and infrastructure. *See* GCI Comments at 2.

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rural telecommunications infrastructure if it accepts the premise that wireless companies without adequate network resources in outlying areas can fulfill the role of the carrier of last resort.”¹⁶

Accordingly, WCC urges the Bureau to reconsider this aspect of the relief granted in the *Interim Order* and grant WCC retroactive relief to January 1, 2012.

II. Interim Support Retroactive to January 1, 2012, Is Consistent with the Commission’s Policy Against Flash Cuts.

Not only does WCC have a clear need for retroactive support, but the Commission’s policy against flash cuts supports the Bureau providing WCC with interim relief retroactive to January 1, 2012. The Commission has continually assured carriers and Congress that there would be “no flash cuts” associated with the *USF/ICC Transformation Order*.¹⁷

In a recent hearing before the Senate Indian Affairs Committee, Commissioner Clyburn reiterated her commitment to this principle, testifying that she was not going to support flash cuts.¹⁸ Despite this policy, however, the Bureau’s *Interim Order* does not remedy the flash cut that was occasioned on WCC – it grants interim relief beginning June 1 – not January 1.¹⁹ Consistent with the Commission’s clear mandate against flash cuts, WCC requests that the Bureau immediately modify its *Interim Order* to provide interim support to WCC beginning January 1 when the flash cut was imposed.

III. Additional Information Supplied for WCC’s Downtown and White Alice Cell Sites.

In response to staff requests, WCC provides additional information reflecting minutes of use for the White Alice cell site at Attachment A. This information supplements data already provided in WCC’s June 11 ex parte reflecting consolidated minute usage for WCC’s network. As explained

¹⁶ See *id.* at 6.

¹⁷ One of the Commission’s explicit guiding principles from the National Broadband Plan is a mandate against flash cuts for USF reform: “*No flash cuts*: New rules should be phased in over a reasonable time period. Policy makers must give service providers and investors time to adjust to a new regulatory regime.” See Petition for Waiver of Windy City Cellular at 10 (citing Federal Communications Commission, Omnibus Broadband Initiative, Connecting America: The National Broadband Plan, GN Docket No. 09-51 at 143 (2010)).

¹⁸ See John Eggerton, *FCC Grilled Over USF Reform Impact On Telecom In Native Lands*, BROADCASTING & CABLE, June 7, 2012, available at http://www.broadcastingcable.com/article/485657FCC_Grilled_Over_USF_Reform_Impact_On_Telecom_In_Native_Lands.php.

¹⁹ Granting interim relief beginning January 1 also would be consistent with the Commission’s recognition of the unique challenges of serving remote parts of Alaska in adopting a two-year delay and a phase down of support for such carriers. See Petition for Waiver of Windy City Cellular at 6-7, 9-10.



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in that ex parte, as a result of the January flash cut in funding, WCC has not been able to afford software that is capable of breaking out minute usage for individual cell sites. However, in order to provide staff with as much information as possible, WCC has manually broken out records reflecting minute usage specifically for the White Alice site by cross-referencing the White Alice switch local report with the switch vendor's call detail records manual.

To the extent there is any doubt over the necessity of operating more than one cell site in Adak, WCC wants to make clear that both of WCC's cell sites are essential to provide comprehensive service to the entire Adak study area as required by statute.²⁰ WCC's downtown cell site and its White Alice cell site both cover populations within the study area that are not served by the downtown site of GCI.²¹ WCC's downtown site covers populations that cannot be reached by GCI, including outlying areas surrounding Flintstone Village, a housing development currently being populated, and a boat harbor. WCC's White Alice site covers population in the western part of the study area not served by the GCI site.²² Roughly 10% of WCC subscribers live in this remote area. The White Alice site also supports the Maritime Exchange of Alaska's vessel tracking network, the Coast Guard, the State of Alaska, the maritime community, and environmental researchers, subsistence hunters, and contractors in the Aleutian wilderness where coverage was previously blocked by mountains.²³

IV. Conclusion.

WCC appreciates the Bureau's efforts to provide a level of interim support that will allow WCC to fund basic expenses moving forward. However, unless the interim support is provided beginning January 1, 2012, the support only covers half of WCC's operating expenses for 2012 and does not cover the substantial shortfall since January, when the company's funding was unexpectedly cut by 84%. Consistent with the Commission's policy against flash cuts, WCC respectfully requests the Bureau to immediately provide interim support retroactive to January 1, 2012, affording WCC relief from the flash cut, and offering WCC the support it needs to cover its actual monthly operational expenses for all of 2012.

²⁰ See 47 U.S.C. § 214(e)(1) (requiring carriers designated as eligible telecommunications carriers to offer services that are supported by USF funds "throughout the service area for which the designation is received.").

²¹ WCC was the first carrier to commence wireless service in Adak in 2008. See WCC Access Service Request, submitted June 1, 2008, with desired due date of June 28, 2008 at Attachment B. GCI submitted its Access Service Request on October 3, 2008, with a desired due date of October 6, 2008. See GCI Access Service Request at Attachment C.

²² See GCI Comments at 2 (acknowledging that the White Alice site is necessary to cover "all or nearly all of Windy City's existing residential customers not already within GCI's service area").

²³ See WCC June 10 Ex Parte at 3, 6; WCC June 11 Ex Parte at 3, 6.



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WCC looks forward to working with the Bureau to conclude its work on a coordinated solution for WCC and AEE in the coming weeks, and is eager to promptly provide the Bureau with any additional information it requires.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Monica S. Desai".

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*Counsel to Windy City Cellular, LLC and
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White Alice Cell Site Minutes of Use

Attachment A

Explanatory Note

This chart reflects minute/data usage broken out separately for WCC's downtown and White Alice cell sites.

The totals provided in the chart reflect all roamed in/roamed out minutes, local voice minutes, SMS, and data down/date up bytes.

The columns labeled "DT" reflect minute/data usage for the downtown site from May 2010 – May 2012.

The columns labeled "WA" reflect minute/data usage for the White Alice site from December 2011 – May 2012.

Please Note:

WCC deployed the White Alice site in mid-December 2011, but in order to achieve full radio transmit and receive power, WCC had to install additional antennas at the site. Installation of these antennas was completed in February 2012. As a result, the White Alice site minute/data usage reflects relatively lower numbers in December 2011 and January 2012, followed by a predictable increase over the course of subsequent months with expected traffic levels going forward that reflect, roughly, the usage indicated for March and April. No usage is reflected for the White Alice site for the month of May 2012 because power was lost at the site during this month after rats chewed through the power lines.

II

WCC Access Service Request

Attachment B

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GCI Access Service Request

Attachment C

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Article About Resurfaced Bombs on Adak Island

Attachment D



Members of 673d Civil Engineer Squadron Explosive Ordnance Disposal team take a rest after excavating two World War II-era 250-pound AN-M57 bombs on Adak Island June 12. (U.S. Air Force photo/Senior Airman Ross Whitley)

JBER AIRMEN CLEAR THE DANGER ZONE



For more photos of EOD, scan this QR code with your smart phone.

Senior Airman Ross A. Whitley
JBER Public Affairs

ADAK — The explosive ordnance disposal team tried and tried to make it out to the remote island, but every time they were prepared for the trip, their flight was cancelled due to weather. After many tries, they finally got out to the island — but the trip was cut short. The team only had time to dispose of one of three bombs.

They did what they could, and returned

home to wait for another opportunity.

The team from the 673d Civil Engineer Squadron's Explosive Ordnance Disposal Flight had been waiting for months for the opportunity to finish the job, and on June 12, they got it.

A team of JBER Airmen traveled to the island of Adak in the Aleutian island chain to dispose of some World War II-era bombs.

They had been notified last winter of three bombs which had surfaced on the island.

See EOD, Page A-3

“We are grateful the group could come out and take care of it for us.”

— Layton Lockett,
Adak city manager

EOD

From Page A-1

In February, the team traveled to Adak on an Air Force C-12 Huron aircraft and detonated one of the three 250-pound AN-M57 aircraft bombs.

Weather precluded them from returning til recently.

"Adak Island is known for its terrible eather," said C-12 pilot Air Force Capt. John Smyrski, 517th Airlift Squadron. "Seventy-five percent of the year it's either raining or snowing, so no matter what day it is, it's bad for trying to land on."

The island is currently home to about 200 people. The military had a strong presence there during World War II and left in 1997. After World War II, the military disposed of extra ammunition by burying it.

After 60 years of erosion and runoff, some of these munitions are resurfacing. The EOD team disposes of found munitions and makes the area safe for residents.

"We thought they were practice bombs and we are not experts on explosives like that," said Layton Lockett, Adak city manager. "They could have ... exploded later, and somebody really could have gotten hurt. We are grateful the group could come out and take care of it for us."

The two remaining bombs were on the outskirts of Adak, in a drainage ditch on the side of a road.

"When the snow melted, the runoff actually exposed the bombs," said Air Force Staff Sgt. Brandon Harrell, a 673d CES EOD technician.

The team excavated the two bombs and moved them to a safe location for destruction, Harrell said, pointing out a nearby



C-12 Huron pilot Air Force Capt. John Smyrski, 517th Air Lift Squadron, completes a pre-flight inspection on Adak Island June 13, during a 673d Civil Engineer Squadron explosive ordnance disposal mission. (U.S. Air Force photo/Senior Airman Ross Whitley)

area with a bluff that would absorb most of the blast.

"We asked the city of Adak before we came out to pick a spot where things (wouldn't be) damaged," Harrell said.

"We're going to place our charge, run one line of (plastic explosive) on each bomb, and try to blow everything up at the same

time," said Senior Airman Scott South, another EOD technician.

Once the team laid the explosives and placed blasting caps, they moved about 5,000 feet away on a ridge where they could watch the blast from a safe distance.

"Fire in the hole," EOD Tech. Sgt. Dennis Guay shouted above a brisk Adak wind.

After the detonation of the bombs, the team inspected the area for any damage or dangerous material, but there was nothing left.

"It's still amazing to see what is a part of our history and what has been left around," Lockett said. "We really are grateful that it could be taken care of."